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Nollan v. California Coastal Commission: NEXUS APPROACH ADOPTED WHEN GOVERNMENT ATTEMPTS TO RESTRICT LAND DEVELOPMENT

When a state or local government imposes a condition on the new development of land, there must be a substantial nexus between that condition and some injury to the public interest caused by the development. This new "nexus" approach in land-use regulation was recently announced by the Supreme Court in *Nollan v. California Coastal Commission*, ___ U.S. ___, 107 S. Ct. 3141 (1987).

The Nollans owned a beachfront lot on the Pacific Ocean, improved with a small bungalow. Originally, the Nollans leased the property with an option to buy. The option to buy was conditioned on their tearing down the bungalow and replacing it. In order to meet this condition, the Nollans were required to obtain a coastal permit from the California Coastal Commission. Consequently, they asked the commission for permission to tear down the bungalow and replace it with a three-bedroom house. The commission granted the request, but only on the condition that the Nollans grant a permanent easement allowing the public to walk across a portion of their beach, which was located between two public beaches.

The Nollans filed a petition for writ of administrative mandamus in the Superior Court of Ventura County asking it to invalidate the easement condition. They argued that the condition could not be imposed unless there was evidence to prove that their development of the land would adversely affect public access to the beach. The court agreed and remanded the case back to the commission for a hearing. After the hearing, the commission reaffirmed its initial imposition of the condition, citing various justifications for their restriction on the development permit. The commission reasoned that the new house would block the public's view of the ocean, therefore leading to the development of a "wall of residential structures that would prevent the public psychologically...from realizing a stretch of coastline exists that they have every right to visit." *Nolan*, 107 S. Ct. at 3143-44. Furthermore, the commission believed that the new house would also increase private use of the beach. *Nolan*, 107 S. Ct. at 3144. In essence, the commission stated that these purported visual and psychological access problems resulting from the construction of the house, along with future development in the area would result in a severe restriction of the public's ability to

traverse to and along the beaches. *Id.* Consequently, the commission concluded that they were justified in requiring the Nollans to offset these burdens by providing public access to the beaches in the form of an easement across their property.

In response to the commission's decision, the Nollans filed a supplemental petition for a writ of mandamus with the Superior Court of Ventura County. In the petition, they argued that the imposition of the easement condition violated the takings clause of the fifth amendment, as applied to the states through the fourteenth amendment. *Id.* The court agreed with the Nollans, finding that the California Coastal Act of 1976 authorized the commission to impose public access conditions on development permits only where the development would adversely affect public access to the beach. *Id.* In the court's view, the record did not provide sufficient evidence to conclude that replacement of the bungalow with a house would directly and adversely affect public access to the ocean. *Id.* The commission appealed and the California Court of Appeals reversed, finding no statutory or constitutional issues which would prohibit the access condition on the Nollans' development permit. *Nolan*, 107 S. Ct. at 3145. The Nollans appealed this decision to the United States Supreme Court, raising only the taking issue.

The question, therefore, before the Supreme Court was whether the public access condition placed on the Nollans' coastal permit violated the takings clause. Writing for the Court, Justice Scalia announced what was in effect a new doctrine in land-use regulation. When the state imposes a condition on new development, he said, there must be a substantial nexus between that condition and some injury to the public interest caused by the development. Had the state ordered the Nollans to grant the easement rights directly, Scalia explained, this would have constituted a taking. *Id.* But conditioning the Nollans' rebuilding permit on their granting of an easement would be a lawful land-use regulation if it substantially furthered governmental purposes that would justify denial of the permit. *Nolan*, 107 S. Ct. at 3146.

Justice Scalia conceded that it was possible to identify harms that might flow from the Nollans' development of the property, such as blocking the public's view of the beach. But he could not find a sufficient relationship between such a harm and the award of additional public-access rights to the beach behind the Nollans' house. Therefore, the commission's imposition of the easement condition was not a valid

exercise of land-use power, and was in effect a "taking," since the condition did not serve public purposes related to the permit requirement.

Four justices, led by Justice Brennan, dissented. The dissenters noted that the Court had long held that the state need only show a rational relationship between the regulation and a public interest, when challenging the exercise of police power under due process or equal protection clauses. *Nolan*, 107 S. Ct. at 3151. The majority's new nexus requirement was not consistent, in their opinion, with this general understanding. In effect, the majority was applying a heightened scrutiny in examining the exercise of the state's police power under the takings clause. *Nolan*, 107 S. Ct. at 3152-53. The dissent would have given much more deference to the legislature by retaining the less stringent "rational relationship" standard.

The dissent was accurate in noting the novelty of the result in *Nollan*. But contrary to the dissent's opinion, this nexus approach is a good one. State and local government officials will no longer be able to demand that developers provide various benefits to the community which are remotely related to their development project. Furthermore, the government will no longer be able to coerce a property owner into conferring benefits on the general public, when they have done nothing that would justify singling them out for such a restriction.

—Stephanie L. Demchylek

